IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07..11..2007

CORAM:

THE HONOURABLE MR. JUSTICE K. CHANDRU

Writ Petition No.23124 of 2007
and
M.P.No.1 of 2007

Tamil Nadu Higher Secondary Post
Graduate Teachers' Association
Regn. No. 160/80
Rep. by its State President Mr. V. Manilvasagam
No. 159 Gengu Reddi Street
Egmore, Chennai 600 008. .. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary
Adi Dravidar and Tribal Welfare Department
Fort St. George, Chennai - 9

2. The Director of Adi Dravidar Welfare
Chepauk, Chennai - 5 .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus directing the respondents to review and set aside the penalty orders issued against the members of the petitioner association in violation of statutory Rules based on the representation dated 22.01.2007.

For Petitioner : Mr. L.Chandrakumar

For Respondents : Mrs.Bhavani Subbarayan, AGP

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O R D E R

The petitioner is the Tamil Nadu Higher Secondary Post Graduates Teachers' Association and they have filed the present writ petition with a strange prayer that the respondents should review and set aside the penalty orders issued against the members of the petitioner Association based on their representation dated 22.01.2007.

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2. I have heard the arguments of Mr.L.Chandrakumar, learned counsel appearing for the petitioner and Mrs. Bhavani Subbarayan, learned Assistant Government Pleader taking notice for the respondents and have perused the records.

3. In the representation dated 22.01.2007, which is addressed to both the respondents, it is stated that it was brought to their notice that consequent to the short fall in the pass percentage of the students studying in the Welfare Schools run by the second respondent, memos were given to the members of the Association and penalties of stoppage of increments have been imposed and that their members have not committed any mistake or wrong in the discharge of their duties. According to the Association, the students studying in the schools run by the second respondent, are far below the average and merit and in many cases, failed students are admitted. It is the students, who do not have keen interest in education which resulted in the poor percentage of marks. Further, even in imposition of penalty, discrimination is shown by the Department and an uniform yardstick should be applied. Therefore, they requested the Department to drop further proceedings and also to cancel the earlier punishment given to its members.

4. None of the teachers / members of the Association had come forward to challenge the penalty imposed on them and in most of the cases, the penalty was stoppage of increment without cumulative effect only for a period of three months. It was also indicated in the penalty orders that a statutory appeal lies to the appellate authority, viz., the Government. Penalties were imposed after issuing charge memo specifying the charges and after getting their explanation. It is also not known whether the concerned teachers have filed any appeal against the penalty imposed on them and there is no mention in the affidavit regarding the same. The petitioner Association has enclosed few of the penalty orders in the typed set filed in support of the writ petition. In all these cases, the Department has specifically pointed out that the pass percentages in the +2 (Higher Secondary) Examination had drastically come down to 66% from 82% and in the 10th Standard, it has come down to 56% from 85%. The teachers have stated that though they have taken care to coach the students, it was beyond their control. In individual cases, if there is any valid explanation, it is always open to the teachers concerned to raise such issues and defend them by the statutory appeals, if any, filed by them. On the contrary, the omnibus prayer made by the petitioner Association is clearly misconceived and it is not maintainable in a writ petition under Article 226 of the Constitution of India.

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5. Instead of asking the members to file a statutory appeal and defend them on individual basis, the petitioner Association has come forward to justify the inaction on the part of its members in producing good pass percentage of the students coached by them. They have come forward to make allegations of communal discrimination in respect of their members adopted by the second respondent. There is nothing to substantiate such a charge and it is rather unfortunate that a general Association of all teachers should make such communal allegations of caste bias against the officers administering the schools run by the second respondent. In fact, rather than making an introspection about the state of affairs of the school in which the members of the petitioner Association were employed, there is an attempt on the part of the Association to justify the poor percentage on the admission policy of the Government. In this context, it is necessary to refer to the following averments made in paragraph 5 of the affidavit:

> "The petitioner further submits that it may not be out of context to mention at this juncture insofar as admission of students into Government schools are concerned, uniform policy of the Government is to admit students with poor academics and also those who are very weak in subject or rather obtained very low marks though not automatically, however under pressure from various sources and these students are being imparted education by the members of the petitioner's Association. In doing so, result as such produced by them in fact is to be appreciated rather than being resorted to what has been done. If it is the status in the Government Schools in general, it is more worse insofar as the welfare schools are concerned and these students are said to have obtained lesser marks than what was expected by the Department or rather the average marks obtained in general."

6. Since the same point has been adopted even in the course of argument, it is necessary to refer to certain stark reality of the state of affairs in the schools run by the local bodies and welfare Departments. In a survey conducted by the Chief Educational Officer of the Coimbatore District and the school run by the local bodies, it was found that merely 12,650 students, who are studying the Middle School sections (upper primary classes) cannot read or write Tamil. This is really a sorry state of affairs in the Education Department and especially in schools which are run by the State Agencies and if this state of affairs continues, it will defeat the very

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purpose of the constitutional goal envisaged under Articles 21-A and 24 of the Constitution of India.

7. In dealing with the need to concentrate on the development of a child, the Supreme Court in the decision reported in 1997 (10) SCC 549 [Bandhua Mukti Morcha v. Union of India and others] emphasised the need of education as the only guarantee of the child development and paragraphs 4 to 8 of the said judgment are reproduced below:

Para 4: "The child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. Mankind has the best hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood - socially, economically, physically and mentally - the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The Founding Fathers of the Constitution, therefore, have emphasised the importance of the role of the child and the need of its best development. Dr Bhimrao Ambedkar, who was far ahead of his time in his wisdom projected these rights in the Directive Principles including the children as beneficiaries . Their deprivation has deleterious effect on the efficacy of the democracy and the rule of law.

Para 5: "Article 39(e) of the Constitution enjoins that the State shall direct its policy towards securing the health and strength of workers, men and women; and the children of tender age will

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not be abused; the citizens should not be forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) enjoins that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and their childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 mandates that the State shall endeavour to provide free and compulsory education for all children until they complete the age of 14 years. The period of ten years provided therein has lost its relevance since as on date, more than 78 million out of 405 million children, 78% of them are employed between the age of 5 to 14 years without any basic and elementary education, health, access to nutrient food and leisure. Article 24 of the Constitution prohibits employment of the children in factories etc. so that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 21 mandates that no person shall be deprived of his life or personal liberty except according to the "procedure established by law" which this Court has interpreted to mean "due process of law". The bane of the poverty is the root of child labour and the children are being subjected to deprivation of their meaningful right to life, leisure, food, shelter, medical aid and education. Every child shall have, without any discrimination on the ground of caste, birth, colour, sex, language, religion, social origin, property or birth alone, right to health, well-being, education and social protection. Article 51-A enjoins that it shall be the duty of every citizen to develop scientific temper, humanism and the spirit of inquiry and to strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavour and achievement. Unless facilities and opportunities are provided to children, in particular those handicapped by social, economic, physical or mental disabilities, the nation stands to lose the human resources and good citizens. Education eradicates illiteracy and provides a means to economic empowerment and

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opportunity to life of culture. Article 26(1) of Universal Declaration of Human Rights assures that everyone has the right to education which shall be free, at least at the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made available and higher education shall equally be accessible to all on the basis of merit. Education enables development of human personality and strengthens the respect for human rights and fundamental freedoms. It promotes understanding, tolerance and friendship among people. It is, therefore, the duty of the State to provide facilities and opportunities to the children driven to child labour to develop their personality as responsible citizens.

Para 6: "Due to poverty, children and youth are subjected to many visible and invisible sufferings and disabilities, in particular health, intellectual and social degradation and deprivation. The Convention on the Rights of the Child which was ratified by the Government of India on 20-11-1989 recognises the rights of the child for full and harmonious development of his or her personality. Child should grow up in a family environment, in an atmosphere of happiness, love and understanding. The child should be full y prepared to live an individual life in society. Article 3 provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration. Article 27(1) provides that the State parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 28 provides thus:

"1. State parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) make primary education compulsory and available free to all;

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(b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) make higher education accessible to all on the basis of capacity by every appropriate means;

(d) make educational and vocational information and guidance available and accessible to all children;

(e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. State parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present convention.

3. State parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods in this regard. Particular account shall be taken of the needs of developing countries."

Para 7: "Article 31(1) recognises the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. Article 32(1) which is material for the purpose of this case reads as under:

"1. State parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be

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hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. State parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, State parties shall in particular

(a) provide for a minimum age or minimum ages for admission to employment;

(b) provide for appropriate regulation of the hours and conditions of employment;

(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article."

Para 8: "Article 36 states that State parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. No doubt, the Government, while ratifying the Convention with a reservation of progressive implementation of the governance, reminded itself of the obligations undertaken thereunder, but they do not absolve the State in its fundamental governance of the imperatives of Directive Principles of the Constitution, particularly, Articles 45, 39(e) and (f), 46 read with the Preamble, Articles 21, 23 and 24 of the Constitution rendering socio-economic justice to the child and their empowerment, full growth of their personality - socially, educationally and culturally - with a right to leisure and opportunity for development of the spirit of reform, inquiry, humanism and scientific temper to improve excellence - individually and collectively."

8. Further, it was pointed out regarding the child belonging to poor and weaker sections and the steps to be taken by the State as well as the attempt to eradicate illiteracy. The following passages found in paragraphs 10 and 11 may be usefully reproduced:

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Para 10: "..... Pragmatic, realistic and constructive steps and actions are required to be taken to enable the child belonging to poor, weaker sections, Dalits and Tribes and minorities, enjoy their childhood and develop their full blossomed personality - educationally, intellectually and culturally - with a spirit of inquiry, reform and enjoyment of leisure. Child labour, therefore, must be eradicated through well-planned, poverty-focussed alleviation, development and imposition of trade actions in employment of the children etc. Total banishment of employment may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and prone to social risks etc. Therefore, while exploitation of the child must be progressively banned, other simultaneous alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Immediate ban of child labour would be both unrealistic and counter-productive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like.

Para 11: Illiteracy has many adverse effects in a democracy governed by rule of law. A free educated citizen could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop a spirit of tolerance and reform. Therefore, education is compulsory. Primary education to the children, in particular, to the child from poor, weaker sections, Dalits and Tribes and minorities is mandatory. The basic education and employment-oriented vocational education should be imparted so as to empower the children within these segments of the society to retrieve them from poverty and, thus, develop basic abilities, skills and capabilities to live a meaningful life for economic and social empowerment. Compulsory education, therefore, to these children is one of

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the principal means and primary duty of the State for stability of the democracy, social integration and to eliminate social tensions."

9. While dealing with the role of a teacher, the Supreme Court observed in Manager, Nirmala Senior Secondary School v. N.I. Khan reported in (2003) 12 SCC 84 and paragraphs 1 and 2 of the said judgment are relevant for the present case and the same may be usefully extracted below:

Para 1: "A teacher affects eternity. He can never tell where his influence stops; said Henry Adam. Any educational institution for its growth and acceptability to a large measure depends upon the quality of teachers.

Para 2: Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important."

10. Recently, the Supreme Court, in the decision reported in JT 2006 (12) SC 205 [Sushmita Basu and others v. Ballygunge Siksha Samity and others], once again re-emphasised the role of the teaching community. Speaking for the Bench, His Lordship Justice P.K.Balasubramanyan, in paragraph 5 of the judgment observed as follows:

Para 5: "We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the 'guru'. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in

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addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the cause for putting education beyond the ken of children of parents of average families with average incomes. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students, former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice."

11. Myron Weiner, a Professor of Chicago University, in his book titled "The Child and the State in India" dealing with the child labour and education policy (Oxford University Press Delhi, 1991 Edition) in Chapter I, observed as follows:

> "The positive side to this analysis is that India need not wait until income levels of the poor have risen, population growth rates have slowed, employers have need for a more skilled labor force, or government has greater resources. Indeed, such changes in the country's economic and demographic conditions would not result in the voluntary end of the child labor and in universal primary-school education. The experiences of other countries also suggests that it is within the power of the Indian government to make education compulsory. Otherwise, child labor will not be ended and literacy will not become universal.
>
> The negative side of this analysis is that deeply and widely shared attitudes, not simply of a handful of policymakers but of educators, social activists, and trade unionists who elsewhere have been in the forefront of reform movements for the abolition of child labor and the establishment of compulsory education, stand in the way of effective policies. Political

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> change in the central or state governments will not necessarily result in policy changes since on these issues there are no differences among India's political parties. Non-Congress state governments have taken no more initiative than have Congress governments, though the states share responsibility for elementary education and for the enforcement of child-labor laws. If the impediment to change comes because of the attitudes of those who make, implement, and influence policy, and if these attitudes are based on deeply held beliefs that are not easily shaken, is reform likely? Yes, but only if there is first a change in the way in which policymakers and those who influence them think about the problem."

12. It is the argument of the petitioner Association that the policy of the State to admit children from poorer background is responsible for the poor results and it only shows bias against the children and if it is stretched too far, it will result in social injustice to the students coming from the deprived sections and defeat the goal of Articles 21-A and 24 of the Constitution of India. It is advisable that the petitioner Association must ponder over such issues in a more academic sense and then come with solutions to solve the problem of poor pass percentage of the students coming from the Dalit sections rather than confronting the State which demands accountability from those who are concerned with the teaching to such students.

13. In view of the above, the writ petition is devoid of merits and deserves to be dismissed. Accordingly, the writ petition is dismissed. No costs. Connected Miscellaneous Petition is closed.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   Government of Tamil Nadu
   Adi Dravidar and Tribal Welfare Department
   Fort St. George, Chennai - 9

2. The Director of Adi Dravidar Welfare
   Chepauk, Chennai - 5

- 1 cc to Mr. L. Chandrakumar, Advocate SR no. 66924
- + 1 cc to the Government Pleader, SR No.66951

VC(CO)
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